

**ORDINANCE NO. 03-05**

**AN ORDINANCE** granting a franchise to United Telephone Company to build, construct, operate and maintain a digital video system in the Town of Nolensville, Tennessee, and setting forth conditions accompanying the granting of this franchise:

Be it ordained by the Board of Mayor and Aldermen of the Town of Nolensville, Tennessee, as follows:

Section 1.     Title. This Ordinance shall be known and may be cited as the Terms and Conditions of the Digital Video Franchise.

Section 2.     Definitions. For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word “shall” is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below”.

“Town” or “Grantor” is the Town of Nolensville, Tennessee, a municipal corporation under the laws of the State of Tennessee, or any successor to the Legislative powers of the present Town.

“Grantee” or “Company” is United Telephone Company, a Tennessee corporation. It is the grantee of rights under this franchise.

“Franchise” is the rights granted to any person by the Town of Nolensville under the terms of this and any agreement entered into by and between the Town of Nolensville, Tennessee, and such person according to the terms of this Code.

“Board of Mayor and Aldermen” is the governing legislative body of the Town of Nolensville, Tennessee.

“Person” is any person, firm, partnership, association, corporation, company or organization of any kind.

“Digital System” or “Digital Video System” means (i) a system of coaxial cables or other electrical conductors and equipment used or to be used to receive or transmit video programming, radio signals, or other programming, originated directly or indirectly or taken off the air, and to transmit them to the subscribers for a fee and (ii) subscriber interaction, if any, which is required for the selection of such video programming, or other programming service. “Digital System” shall not include telephone services.

“Corporate Limits” shall include all areas lying within the limits of the Town of Nolensville, Tennessee, as from time to time changed by annexation or other legal methods.

“Federal Communications Commission” or “FCC” is the Federal Commission or Agency created pursuant to the Communications Act of 1934 or its successor agency.

“Channels” shall mean a group of frequencies in the electromagnetic spectrum (or any other means of transmission, including but not limited to optical fibers or any other means now available or that may become available) capable of carrying an audio-data or an audio-video television signal.

“Basic Video Service” means any service tier which includes the re-transmission of local television broadcast signals, which tier also meets the definitions of Basic Service contained in 47 U.S.C. 543(b)(7), if applicable.

“Gross Annual Receipts” shall mean all revenue derived directly by the Grantee and its subsidiaries, from or in connection with the operation of the Digital System in the Town pursuant to this Ordinance; including, but not limited to, gross annual basic video service receipts, gross annual premium channels receipts from use of commercial channels, installation and reconnection fees, and converter and other equipment rentals; provided, however, that this shall not include any taxes on services furnished by the Grantee herein, imposed directly upon any subscriber or user by the state, Town, or other governmental entity and collected by the Grantee on behalf of said governmental unit.

“Town of Nolensville” means the present municipal corporation of Nolensville, together with any future annexation made pursuant to law. Also referred to as “Town”.

“Ordinance” or “Franchise Ordinance” means this Ordinance which grants a franchise and defines the specific rights and obligations of each party pursuant to the general authority, powers and restrictions of this Ordinance.

“Streets” shall mean the surface of and all rights-of-way and the space above and below any public street, road, highway, bridge, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive, waterways, dock, wharf, pier, or easement now or hereafter held by the Town for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Town which shall, within their proper use and meaning entitle the franchisee to the use thereof for the purposes of installing or transmitting digital video system transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary, and pertinent to a digital video system.

“Year” means the remaining portion of any calendar year in which a franchise is granted. Thereafter, “Year” means a full calendar year.

### Section 3. Grant of Authority.

(a) The Town warrants it has a right to issue a franchise and the Grantee, by acceptance, acknowledges and accepts the right of the Town to issue the same.

(b) The Town hereby grants to Grantee, subject to the right of amendment as hereinafter provided in Section 12, the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the Town, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures

necessary for the maintenance and operation in the Town of a digital video system for the interception, retransmission, sale, and distribution of television signals, radio, data, or other electronic signals as may be deemed appropriate by the Grantee, upon the limitations, terms, and conditions in this ordinance contained, as the same may be from time to time amended.

(c) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive when granted by the Town.

#### Section 4. Compliance with Applicable Laws.

(a) Grantee, at all times during the life of its franchise, shall be subject to all lawful exercise of the police power by the Town. Unless otherwise prohibited by State or Federal law, or where jurisdiction has been or shall be conferred upon a State or Federal commission, board or body, the Town reserves a right by ordinance or resolution to regulate such digital video system as to attachment fees, if any; rates and charges to be paid by the subscribers for the service; the quality of service to be provided subscribers; the rate of construction of facilities so as to serve the territorial area referred to hereinafter; to promulgate rules and regulations and other necessary supervisory procedures to assure prompt completion of the system; to provide service for all citizens of the Town and its police jurisdiction wherever located; to set a schedule of construction that will attain the said completion of such system as hereinabove last stated; and to adopt such other rules and regulations it may now or hereafter lawfully impose in keeping with and not in conflict with applicable State or Federal law, or the lawful body and/or any lawful State rules and/or regulations lawfully adopted by any State commission, board or body.

(b) Grantee and its successors and assigns granted a franchise hereunder shall be subject to lawful regulations heretofore or hereafter adopted by the Federal Communications Commission and should it now be or hereafter become subject to the jurisdiction of any other commission then also to the lawful rules and regulations adopted by such commission and also to the lawful rules and regulations adopted by such commission and also to the lawful rules and regulations adopted by any similar Federal commission or State regulatory body having jurisdiction. If the Grantee and its successors or assigns shall fail to comply with any material Federal and/or State statute, rules, regulations, orders or conditions lawfully vested under Federal law in any Federal regulatory body and/or rules, regulations, orders and conditions lawfully vested in any State regulatory body and/or rules, regulations, orders and conditions lawfully vested in the Town, the Town shall have the right to initiate the forfeiture procedures set forth in Section 16 herein.

Section 5. Franchise and Area. Any franchise granted hereunder relates to the present Town limits of the Town and to any area hereafter added thereto during the term of any franchise granted hereunder.

Section 6. Services. The digital video system provided by the Grantee shall be capable of delivering at least eighty (80) video channels to all customers.

Section 7. Customer Service and signal Quality Requirements. The Grantee shall:

(a) Comply with the technical standards provided by the Federal Communications Commission at 47 C.F.R. 76.601 through 76.609, as from time to time amended.

(b) Limit failures which leave ten (10) or more subscribers with no cable or video service to a minimum by locating and correcting such malfunctions properly and promptly, but in no event longer than twenty-four (24) hours after notice unless prevented by an act of God or other causes beyond the control of the Grantee.

(c) Demonstrate by instruments or otherwise to subscribers that a signal of adequate strength and quality is being delivered.

(d) In the case of any outage within the control of Grantee in which twenty-five (25) or more customers are completely without digital video service for seventy-two (72) hours or more, calculate a pro rata reduction in the charge for digital video service, to be itemized and included in the next regular bill to the customer(s) involved; provided, however, that the affected customer(s) must contact the Grantee in order for Grantee to credit such customer(s).

(e) Comply with the Customer Service and Consumer Protection Standards at 47 C.F.R. 76.309, as from time to time amended by the Federal Communications commission.

Section 8. Public, Educational & Governmental Access Channels and Emergency Broadcast Services Required.

(a) The Grantee shall provide, but without charge and subject to the rules and regulations of the Federal Communications Commission, public emergency broadcast capabilities whereby the Town can interrupt service on all channels in order to make such public emergency communications as it deems necessary.

(b) Grantee shall reserve a minimum of one channel for public, educational and governmental (PEG) access use. Grantee shall have the right to use and program said channel in its sole discretion until such time as the Town, on no less than ninety (90) days prior written notice, informs Grantee of its intent to exercise its right to said channel pursuant to this Section. The Town shall be solely responsible for any and all equipment necessary to activate and deliver programming on the PEG channel. The Town shall assume all responsibility for regulation and/or scheduling the use of the PEG channel(s) by any and all users.

Section 9. Indemnification. Grantee shall save the Town harmless from all loss sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever against the Town resulting from negligence on the part of Grantee in the construction, operation or maintenance of its digital video system in the Town; and for this purpose Grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Tennessee. The amounts of such insurance to be carried for liability due to property damage shall be \$100,000 as to any one occurrence and against liability due to injury to or death of person, \$250,000 as to any one person and \$500,000 as to any one occurrence. The Town shall notify Grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Town on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the Town is made by suit or legal action, written notice thereof shall be given by the Town to Grantee not less than five (5) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the Town,

whichever notice period yields Grantee the larger amount of time within which to prepare an answer.

#### Section 10. Construction & Maintenance.

(a) All structures, lines and equipment erected by Grantee within the Town pursuant to this franchise shall be so located as to cause minimum interference with the proper use of streets, alleys, public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners.

Existing poles, posts, conduits, and other such structures of any electric power system, telephone company, or other public utility located in the Town shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The Town shall actively assist Grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits. To the extent that existing poles, posts, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of Grantee's digital video system, Grantee shall have the right to purchase, lease, or in any other manner acquire land, rights-of-way, or public utility easements upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its digital video system. Where all other existing utilities are underground, Grantee shall locate its facilities underground.

(b) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced.

(c) Grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(d) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, public utility easements and public grounds or place of the Town shall be kept by Grantee at all times in a safe condition.

(e) When the Town undertakes any reconstruction, realignment or any other work on Town streets which would require relocating or modification of Grantee's poles, wires or other facilities, Town shall notify Grantee, and Grantee shall be responsible for such relocations of Grantee's facilities.

Section 11. Service Extension. Grantee agrees to extend its cables to provide additional service within the corporate limits of the Town of Nolensville so as to make the service available to all potential residential subscribers located within One Hundred Fifty (150) feet of Grantee's feeder cable where there exists a minimum density of twenty-five (25) homes per mile. Grantee may elect, but has no obligation, to offer service to areas not meeting the above standard.

Section 12. Amendment & Supplemental Agreements. It shall be the policy of the Town to amend the Franchise, upon application of the Grantee, when necessary, to enable the Grantee to take advantage of any development or developments in the field of transmission of television and radio signals which will afford it an opportunity to more efficiently, effectively or economically serve its customers. Provided, however, that this section shall not be construed to require the Town to make any amendment.

Section 13. Filings & Communications With Regulatory Agencies. Upon the request of the Town Administrator, copies of all petitions, applications, registrations and responses to complaints submitted by the Grantee to the Federal Communications Commission shall also be submitted to the Town.

Section 14. Maps, Plats & Reports.

(a) Upon the request of the Town Administrator, Grantee shall file with the Town Administrator a true and accurate map or plat of all existing and proposed installations. Such map or plat shall be updated at least annually.

(b) The Grantee shall file annually with the Town, or its designee, not later than ninety (90) days after the end of the Grantee's fiscal year, a letter containing the amount of the Gross Revenues for the previous fiscal year certified by Grantee's controller or chief financial officer.

(c) Upon the request of the Town Administrator, Grantee shall provide the Town Administrator with a current list of its partners and stockholders with an interest of 10% or greater, its officers and directors and bond holders.

Section 15. Franchise Term & Renewal. This franchise shall take effect and be in full force from \_\_\_\_\_, 2003 and after acceptance by Grantee as provided in Section 20, and the same shall continue in full force and effect for a term of twelve (12) years. Renewals shall be accomplished as provided for in Federal law and regulations.

Section 16. Forfeiture. If Grantee should violate any material terms, conditions, or provisions of this franchise or if Grantee should fail to comply with any material provisions of any ordinance of the Town regulating the use by Grantee of the streets, alleys, public utility easements or public ways or the Town, and should Grantee further continue to violate or fail to comply with the same for a period of ninety (90) days after Grantee shall have been notified in writing by the Town to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided, however, that such forfeiture shall be declared only by written decision of Board of Mayor and Aldermen after an appropriate public proceeding before the Board of Mayor and Aldermen affording Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the Board of Mayor and Aldermen may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to

comply with any resultant penalty to any court of competent jurisdiction, as provided in 47 U.S.C. 555. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey its digital system to a qualified purchaser at fair market value. During, this six (6) month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate its digital video system pursuant to the provisions of this franchise. Notwithstanding the foregoing and without regard to the termination of this franchise for any reason, Grantee shall have no obligation to sell its digital video system as long as it continues to offer local telephone service in the Town.

Section 17. Surrender Right. Grantee may surrender this franchise at any time upon filing with the Town Administrator of the Town a written notice of its intention to do so at least six (6) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this franchise shall terminate. Further, should the Grantee, his and/or its successors and assigns discontinue the business for which this franchise is granted, all poles, wires, cables and other devices shall be removed without expense to the Town, within ninety (90) days after demand for such removal is made by the Town. Notwithstanding the foregoing and without regard to the termination of this franchise for any reason, Grantee shall have no obligation to remove its poles, wires, cables and other devices as long as it continues to offer local telephone service in the Town.

Section 18. Transfers. All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the Town and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the Board of Mayor and Aldermen, which approval shall not be unreasonably withheld, in compliance with the requirements of 47 U.S.C. 537(e); provided, however, that: (i) the *pro forma* transfer to a parent or a wholly owned subsidiary corporation or limited liability company; (ii) to a partnership with the Grantee as general partner; (iii) the assignment or hypothecation of the franchise by Grantee as security for debt; or (iv) the transfer or assignment between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities, shall be permitted without the prior approval of the Board of Mayor and Aldermen. The Town shall take such consent or denial action within the limits prescribed in 47 U.S.C. 537(e).

Section 19. Franchise Fee. In consideration of the terms of this franchise, and in conformity with 47 U.S.C. §542, Grantee agrees to pay the Town a sum of money equal to five percent (5%) of Grantee's gross annual receipts per year. Such sum shall be payable quarterly, no later than sixty (60) days following the end of the quarter. Gross Revenues shall not include any fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency. In addition, Gross Revenues shall not include franchise fees. This fee shall be deemed to reimburse the Town for all costs of regulating the Video System of the Grantee and shall cover the expense of all regulatory requirements including, but not limited to, any performance testing required by the Town under this Ordinance. This payment shall be in addition to any other tax or payment owed to the Town by Grantee, including ad valorem or business taxes.

Section 20. Effective Date and Acceptance. This Ordinance shall become effective on \_\_\_\_\_, 2003 and, after acceptance by Grantee, shall then be and become a valid and binding contract between the Town and Grantee; provided, however, that this Ordinance shall be void unless Grantee shall, within ninety (90) days after the final passage of this Ordinance as provided in Section 22, file with the Town Administrator of the Town a written acceptance of this Ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Ordinance.

Section 21. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or state court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding, shall not effect the validity of the remaining portions hereof.

Section 22. Passage and Effective Date. For purposes of becoming a law, this Ordinance shall be effective fifteen (15) days from and after its final passage, the public welfare requiring it. For all other purposes, it shall be effective as provided for in Section 20 above.

**ATTEST:**

**TOWN OF NOLENSVILLE**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Knapper, Mayor

APPROVED BY: \_\_\_\_\_

\_\_\_\_\_  
Robert J. Notestine, III, Town Attorney

PASSES FIRST READING: \_\_\_\_\_

PASSES SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
Cindy Lancaster, Town Recorder



## **ACCEPTANCE AND ACKNOWLEDGMENT**

Grantee accepts and hereby agrees to be bound by all of the items, conditions and restrictions of this Franchise.

UNITED TELEPHONE COMPANY

By: \_\_\_\_\_  
Herbert R. Bivens  
General Manager

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_